HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No. 3047 OF 2006

-

-

Between:

M/s. S.V. Teleservices, having its Office at

#1-2-593/4/A, Gagan Mahal Colony, Domalguda,

Hyderabad – 500 029, represented by

Mr. Sanjay M. Dolwani, Proprietor

……Petitioner

And

State of Andhra Pradesh

Represented by the Principal Secretary,

Department of Revenue,

Government of Andhra Pradesh,

Secretariat, Hyderabad and three others

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri C.R. Sridharan

Counsel for Respondent Nos.1 to 3 : Sri A.V. Krishna Koundinya,

Special Standing Counsel for

Commercial Taxes

Counsel for Respondent No.4 : Smt. A. Kalyani,

representing Sri A.Rajasekhar

Reddy, Assistant Solicitor

General

Dated: 22-03-2006

Per G.S. SINGHVI, CJ

This is a petition for quashing circular dated 22-09-2005 issued by Commissioner of Commercial Taxes, Andhra Pradesh for levy of tax on the sale of SIM cards and/or recharge coupons and also for quashing assessment order dated 03-01-2006 passed by Commercial Tax Officer, Mahankali Street Circle, Secunderabad whereby a demand of Rs.7,91,128/- has been created against the petitioner under Andhra Pradesh Value Added Tax, 2005.

Although the non-petitioners have not filed counter affidavit, we do not consider it necessary to defer the adjudication of the writ petition because the issue raised therein has been substantially settled by the judgment of the Supreme Court in **Bharat Sanchar Nigam Ltd. & Another Vs. Union of India & Others**.

Learned counsel representing the department fairly states that in view of the judgment of the Supreme Court, he cannot support the assessment order.

We appreciate the fair statement of the learned counsel representing the department. Even otherwise, we are convinced that the order of assessment is liable to be nullified on the ground of non-application of mind by the assessing authority and violation of the dictum law laid down in **Barium Chemicals Ltd. V. Company Law Board**.

In the premise aforesaid, the writ petition is allowed. Assessment order passed by respondent No.3 is quashed with liberty to the concerned officer to pass fresh order in accordance with law keeping in view the judgment of the Supreme Court in **Bharat Sanchar Nigam Ltd. & Another Vs. Union of India & Others** (supra) and particularly, the observations contained in paragraph 42 therein.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

22-03-2006

ks